

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF NORTH CAROLINA  
CHARLOTTE DIVISION  
3:07CV530-1-MU

JOSE R. ALMONTE, )  
 )  
 Petitioner, )  
 )  
 v. )  
 )  
 UNITED STATES OF AMERICA, )  
 )  
 Respondent. )  
 \_\_\_\_\_ )

**ORDER**

**THIS MATTER** comes before the Court upon Petitioner's Motion for Voluntary Dismissal, filed June 3, 2008.

Petitioner filed a pro se Motion to Vacate, Set Aside, or Correct Sentence on December 18, 2007. On March 10, 2008, the Government filed a Motion for Summary Judgment asking the Court to dismiss Petitioner's Motion to Vacate. Petitioner, through counsel, has now requested that he be allowed to dismiss his Motion to Vacate without prejudice. The Government opposes a dismissal without prejudice stating that no particular reason for the need for such a dismissal has been given and notes that a response has already been provided by the Government. In response, Petitioner states that the evidence he had hoped to procure to support his claims has not materialized and therefore he wishes not to proceed at this time with his Motion to Vacate.

The Court is sympathetic to the Government's position but feels that in the interest of justice, Petitioner's motion should be allowed without prejudice.

**THEREFORE, IT IS HEREBY ORDERED that:**

1. Petitioner's Motion for Voluntary Dismissal (Doc. No. 14) is **GRANTED**; and
2. Petitioner's Motion to Vacate, Set Aside, or Correct Sentence (Doc. No. 1) is

**DISMISSED without prejudice;**

3. Respondent's Motion for Summary Judgment (Doc. No. 11) is **DENIED as moot.**

Signed: June 10, 2008

A handwritten signature in black ink, reading "Graham C. Mullen", written over a horizontal line.

Graham C. Mullen  
United States District Judge



SEALED DOCUMENT with access to All Parties/Defendants